

REMARKS

Claims 1 and 4-29 are pending in the application of which claims 10-13, 26 and 29 have been withdrawn from consideration; claims 1, 4-9, 14-25, and 27-28 are presented for reconsideration and further examination in view of the foregoing amendments and following remarks.

In the outstanding Office Action claims 1, 4-9, 14-25, and 27-28 were rejected under the judicially created doctrine of obviousness-type double patenting over U.S. Patent No. 6,250,714.

By this Response and Amendment independent claims 1 and 15 are amended; and the obviousness-type double patenting rejections are traversed.

Support for the amendments to claims 1 and 15 is found in the originally filed drawings of Figs. 1-19.

It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. § 132.

Double Patenting Rejection

The Examiner rejected claims 1, 4-9, 14-25, 27 and 28, stating:

Claims 1, 4-9, 14-25, 27 and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,250,714 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because each claims a seatback including a headrest, a headrest supporting portion with an intermediate part and first and second ends, a pivotal

element, an I-shape pressure receiving portion with cover, a cross frame with first stopper face and second stopper face, a biasing means with hook, and a spring resilient member.

RESPONSE

Applicant respectfully traverses the rejections.

Any obvious-type double patenting rejection should make clear:

(A) the differences between the inventions defined by the conflicting claims, and (B) the reasons why a person of ordinary skill in the art would conclude that the claims in issue are obvious variations of the claims in the patent or second application (MPEP § 804, paragraph II.B.1). Further, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966), for determining obviousness under 35 U.S.C. § 103 should be employed when making an obviousness-type double patenting rejection (*In re Braat*, 937 F.2d 589, 19 U.S.P.Q.2d 1289, 1292 (Fed. Cir. 1991); MPEP § 804, paragraph II.B.1).

Applicant respectfully submits that although the outstanding Office Action attempts to address similarities between the claims of the '714 patent and the claims pending in the instant application, the Office Action fails to address and consider the differences between the currently pending claims and the purportedly conflicting claims. Therefore Applicant respectfully submits the Examiner's reasons for concluding that the present claims are obvious variations of claims 1-7 of the '714 patent are flawed.

Without waiving the aforementioned deficiencies, Applicant respectfully traverses the double patenting rejection over the '714 patent on the ground that the instant claims are patentably distinct.

Traversal

An obviousness-type double patenting rejection is improper where the application claims are patentably distinct from the prior patent claims.

The '714 patent claims a supporting member slidably and pivotably engages with a cross member. The instant application claims a pivotal element is supported rotatably to a cross frame, the pivotal element supporting rotatably the supporting member.

More particularly, claim 1 of the '714 patent claims a seatback frame including a pair of side members, and a cross-member between the side members; a headrest movably mounted on the cross-member; a pressure receiving member of a rigid body, the pressure receiving member being provided between the side members; a link provided between the pressure receiving member and one of the side members, the link including **a pivotal element rotatably supported by the one of the side members**, the link being connected to the pressure receiving member, the link to pivot on the pivotal element; and a supporting member provided between the head rest and the pressure receiving member, **the supporting member including a first part supported by the pressure receiving member, the first**

part to pivot rearwardly on the pivotal element through the link with the pressure receiving member to move close to the cross-member, the supporting member including a second part supporting the headrest and extending to the first part, the second part slidably and pivotably engaging with the cross-member, the second part to pivot forwardly on the cross-member, being slid relative to the cross-member for moving the headrest apart from the cross member.

By contrast, claims 1 of the instant application as previously amended and as herein further amended and resubmitted, claims a supporting member including a pressure receiving position, the supporting member being disposed between the side frames, the supporting member supporting the headrest, the pressure receiving portion and the headrest having the cross frame disposed therebetween; and **a pivotal element rotatably supported to the cross frame, the pivotal element supporting rotatably the supporting member** thereon. Similarly, claim 15 of the instant application as previously amended and as herein further amended and resubmitted, claims a supporting member having a first end, a second end and an intermediate part between the first end and the second end, the first end supporting the headrest, the second end being configured to receive a load by a pressurizing element; and **a pivotal element supporting rotatably the intermediate part of the supporting member, the pivotal element being rotatably supported to**

the cross frame.

The '714 patent does not claim **a pivotal element rotatably supported to the cross frame, the pivotal element supporting rotatably the supporting member thereon**, as claimed in claim 1 of the instant application. Additionally, the '714 patent does not claim **a pivotal element supporting rotatably the intermediate part of the supporting member, the pivotal element being rotatably supported to the cross frame**, as claimed in claim 15.

Further, there is no teaching or suggestion in the claims of the '714 patent which would lead one of ordinary skill in the art to conclude that the present claims are an obvious variation of the claims of the '714 patent. Thus, it is respectfully submitted that the independent claims 1 and 15 are non-obvious over, and patentably distinct from, U.S. Patent No. 6,250,714.

Claims 4-9 and 14, each ultimately dependent from claim 1, are asserted to be non-obvious over, and patentably distinct from, U.S. Patent No. 6,250,714 for at least the same reasons that claim 1 is non-obvious, and patentably distinct thereover. Claims 16-25, 27 and 28 each ultimately dependent from claim 15, are asserted to be non-obvious over, and patentably distinct from, U.S. Patent No. 6,250,714 for at least the same reasons that claim 15 is non-obvious, and patentably distinct thereover.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejections of claims 1, 4-9, 14-25, 27

and 28.

CONCLUSION

In light of the foregoing, Applicant submits that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

Respectfully submitted,

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Attachment "A"
(Marked-Up Copy of Amended Claims)

1. (Twice Amended) A seatback for an automobile comprising:
a seatback frame comprising:

side frames spaced apart from each other; and

a cross frame fixed between the side frames; and

a headrest member supported by the seatback frame,

the headrest member comprising:

a headrest mounted on the cross frame; and

a supporting member including a pressure receiving position, the supporting member being disposed between the side frames, the supporting member supporting the headrest, the pressure receiving portion and the headrest having the cross frame disposed therebetween; and

a pivotal element rotatably supported to the cross frame, the pivotal element supporting rotatably the supporting member thereon.

15. (Twice Amended) A seatback for an automobile comprising:

a seatback frame including:

side frames spaced apart from each other; and

a cross frame fixed between the side frames;

a headrest mounted on the cross frame;

a supporting member having a first end, a second end and an

intermediate part between the first end and the second end, the first end supporting the headrest, the second end being configured to [apply] receive a load by a pressurizing element; and

a pivotal element supporting rotatably the intermediate part of the supporting member, the pivotal element being rotatably supported to the cross frame.